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August 14, 1998

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Magalie Roman Salas, Esq.
Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

Hand Delivered

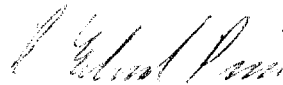
Re: Written *Ex Parte* Presentation
CC Docket No. 97-211

Dear Ms. Salas:

Transmitted herewith, on behalf of Telstra Corporation Limited ACN 051 775 556 ("Telstra") and pursuant to Section 1.1206(b)(1) of the Commission's Rules, are two copies of an *ex parte* letter delivered today to Chairman William E. Kennard concerning issues in the above-referenced docket.

In the event there are questions concerning this matter, please contact me.

Very truly yours,



R. Edward Price

Enclosure

cc (w/enc.) by hand delivery:
Michelle M. Carey, Esq.

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Hon. William E. Kennard
Chairman
Federal Communications Commission
1919 M Street, N.W., Room 814
Washington, D.C. 20554

Re: Divestiture of MCI's Internet Business
CC Docket No. 97-211

Dear Chairman Kennard:

I write on behalf of Telstra Corporation Limited ACN 051 775 556 ("Telstra") further to my letter of July 22, 1998, regarding the terms on which MCI Communications Corporation ("MCI") proposes to divest its Internet business to Cable & Wireless plc ("C&W") as a precondition to merging with WorldCom, Inc. ("WorldCom").

The sentiments you expressed last week concerning the need for expanded consumer access to advanced communication systems, such as the Internet, are of direct relevance to the MCI-WorldCom merger docket. As you put it, U.S. consumers will be best served if "all providers of advanced telecommunications service begin at the same starting line and have a fair opportunity to bring consumers the best product at the best value, consistent with the pro-competitive, deregulatory intent of Congress in passing the 1996 Act."¹

In that spirit, Telstra believes that MCI's divestiture of its Internet business should be fair and non-discriminatory to all of the present and future competitors of MCI, WorldCom, and C&W. However, as I noted in my July 22 letter, MCI is currently proposing to offer C&W preferential off-tariffed access, post-divestiture, to international private line (IPL) facilities which connect to MCI's Internet backbone.

Following submission of my July 22 letter, I met with members of the Commission's

¹ "Press Statement of Chairman Kennard on FCC's Actions to Promote Deployment of Advanced Telecommunications Services by All Providers," Aug. 6, 1998, at 3.

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staff to review Telstra's concerns. During that meeting, we discussed Telstra's view that the Commission should require MCI to file a tariff concerning its arrangement with C&W so that the staff can ensure that the arrangement for Internet access is non-discriminatory under Section 202 of the Communications Act.

Some members of the staff asked why MCI's divestiture and the terms on which it provides IPLs to foreign Internet service providers should be dealt with in the context of the merger proceeding. The reason is straightforward. The proposed divestiture of MCI's Internet business, and hence the preferential IPL lease for C&W, are contingent upon FCC approval of the merger. Thus, if the merger is not approved, MCI presumably will not provide IPL and other Internet backbone facilities to C&W on preferential terms. It is the Commission's obligation to ensure that the MCI-WorldCom merger is in the public interest, and it follows that any arrangements between MCI and C&W also must be in the public interest.

The Filed Rate Doctrine Bars MCI From Providing C&W with an Off-Tariff Arrangement for IPLs

The Commission also must ensure that the parties to the merger and divestiture comply with the tariff provisions of the Communications Act pursuant to the Supreme Court's recent decision in AT&T v. Central Office Telephone.²

As the Court held, under Section 203 of the Communication Act and the filed rate doctrine, common carriers may charge only those rates for interstate services which are tariffed with the FCC. The effect of the doctrine is to bar side agreements that give customers preferences not spelled out in filed tariffs and to ensure the Communications Act's objective of uniform treatment for all customers. According to the Supreme Court, "[i]t is that anti-discriminatory policy which lies at 'the heart of the common-carrier section of the Communications Act.'"³ Any "favorable" lease between MCI and C&W — if not contained in MCI's tariff and available on a non-discriminatory basis to C&W's competitors — would amount to a side agreement prohibited by the Communications Act and the filed rate doctrine.

Lastly, it is clear that, following the merger, the new MCI-WorldCom would have an unprecedented level of power in the market for international private lines. The combined IPL market share of MCI and WorldCom in 1996 (the most recent year for which data are

² 118 S.Ct. 1956 (1998).

³ Id. at 1963 (quoting MCI Telecommunications Corp. v. American Tel. & Tel. Co., 512 U.S. 218, 229 (1994)).

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available) was approximately 45%.⁴ Moreover, C&W controls dominant international carriers in numerous countries, including Hong Kong, Panama, Jamaica, Russia and Bermuda. Under these circumstances, it is especially important that the Commission require full disclosure and close scrutiny of any favorable IPL lease which MCI will provide to C&W for Internet access because C&W will be able to match any MCI circuits with circuits obtained from the dominant carriers it controls in key markets, and thus C&W may itself discriminate against other U.S. carriers desiring to obtain similar IPL circuits for Internet access, or otherwise.

Conclusion

To summarize, MCI-WorldCom's preferential treatment of C&W following the merger would not only be illegal under the Communications Act, but would jeopardize access to the U.S. Internet backbone for any competing service provider who wishes to offer advanced communications systems to U.S. consumers. I am sure that you and your fellow Commissioners do not wish that to happen and will act accordingly.

Very truly yours,

Gregory C. Staple REP

Gregory C. Staple

cc: Commissioner Susan Ness
Commissioner Harold W. Furchtgott-Roth
Commissioner Michael K. Powell
Commissioner Gloria Tristani
Christopher J. Wright
Eric J. Bash
Michelle M. Carey
Helen Domenici
Michael Kende
Adam Krinsky
Michael Pryor

⁴ See Industry Analysis Division, Common Carrier Bureau, FCC, "Trends in the U.S. International Telecommunications Industry," Aug. 1998, Table 20.